

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SUSAN ROSE

Claimant

VS.

**PERRY MANUFACTURING/
LAWRENCE PAPER COMPANY**

Respondent

Self-Insured

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Docket No. 183,959

ORDER

Claimant requested Appeals Board review of the Award entered by Assistant Director Brad E. Avery dated April 29, 1996. The Appeals Board heard oral argument by telephone conference on September 19, 1996.

APPEARANCES

Claimant appeared by her attorney, Mark W. Works of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, Miles D. Mustain of Kansas City, Kansas . There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board considered the record and stipulations contained in the Award of the Assistant Director.

ISSUES

Claimant's application for review listed the following issues:

- (1) Nature and extent of claimant's disability.
- (2) Whether claimant was entitled to an award of future medical benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidentiary record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

- (1) The parties stipulated that claimant injured her lower back while working for the respondent on July 20, 1993, when she attempted to flip over a 500 pound roll of plastic. Although claimant was no longer employed by the respondent on the date of the regular hearing, July 18, 1994, she was engaged in employment for another employer earning a wage that exceeded the wage she was earning while employed by the respondent. Therefore, claimant's permanent partial general disability, if any, is limited to functional impairment. See K.S.A. 44-510e.

Three physicians testified in this matter and expressed opinions on claimant's permanent functional impairment. Dr. Michael Poppa treated claimant for her back injury and released her from medical treatment on October 27, 1993, without permanent work restrictions. Dr. Poppa examined claimant again on July 5, 1994, and opined that claimant had no residual functional impairment of a permanent nature as a result of her resolved work-related lumbar strain. At the request of claimant's attorney, Nathan Shechter, M.D., an orthopedic surgeon, in Kansas City, Missouri, examined and evaluated claimant on November 23, 1993. Dr. Shechter assessed claimant with a 7.5 percent permanent functional impairment based upon a 5 degree decrease in lumbar flexion and extension. The Administrative Law Judge appointed Dr. Peter Bieri to perform an independent medical examination of claimant. Dr. Bieri examined claimant on October 3, 1994, and opined that claimant's permanent functional impairment, which was a result of her work-related back

injury, amounted to 2 percent of the whole body based on a minimal loss of range of motion. The only physician to place permanent work restrictions on claimant was Dr. Shechter.

The Assistant Director found the opinion of the treating physician, Dr. Poppa, that claimant had not suffered any permanent residual physical permanent functional impairment as a result of her work-related injury as the most credible medical evidence contained in the record. The Appeals Board agrees with the analysis of the Assistant Director. Accordingly, the Appeals Board finds the greater weight of the evidence contained in the record of this case established that claimant's work-related lumbar strain resolved without residual permanent functional impairment. Therefore, the Appeals Board affirms the Assistant Director's Award that denied claimant permanent partial general disability benefits.

(2) The Assistant Director denied claimant's request for future medical treatment. He found the record contained no evidence that claimant would require future medical treatment in regard to her low back injury. The Appeals Board agrees with that finding and affirms the Assistant Director's denial of future medical benefits.

As noted above, the parties stipulated claimant injured her low back while employed by the respondent on July 20, 1993. The parties also stipulated the respondent had provided medical treatment for claimant's injury in the amount of \$1,622.19. The Assistant Director failed to order those medical expenses paid as authorized medical expenses. The Appeals Board finds that the medical treatment provided the claimant by the respondent in the amount of \$1,622.19 should be ordered paid as authorized medical treatment.

Furthermore, the Appeals Board finds the findings of fact and conclusions of law as set forth in the Award by Assistant Director Brad E. Avery are accurate and appropriate. Those findings and conclusions are adopted by the Appeals Board as its own as if specifically stated herein to the extent they are not inconsistent with this Order.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Assistant Director Brad E. Avery dated April 29, 1996, that denied claimant's request for permanent partial general disability benefits is affirmed and the Award is modified in that the Appeals Board orders respondent to pay authorized medical expenses stipulated by the parties in the amount of \$1,622.19.

All other orders relating to the contract of employment with claimant's attorney and payment of administrative expenses are adopted by the Appeals Board and made a part of this Order.

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Mark W. Works, Topeka, KS
Miles Mustain, Kansas City, KS
Brad E. Avery, Assistant Director
Philip S. Harness, Director